

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER :
DISASTER SITE LITIGATION :
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**ORDER REGULATING FILING
PROCEDURES AND
PROPOUNDING
INTERROGATORIES**

21 MC 100 (AKH)

(Duignan v. The City of New York)
(04 Civ. 07599)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

1. Plaintiffs Patrick and Ann Marie Duignan, and plaintiffs Larrie Placide and Christine Placide move for leave to file a late notice of claim, nunc pro tunc, against defendant, the City of New York. Defendant has not yet filed papers in response. However, I order as follows.

The lawsuit will be severed into two actions, and a separate filing fee and a separate index number will be required for each. The Duignans and the Placides, having no interest in each others' claims, are misjoined and, at my initiative, I order them to be severed. Fed. Rules Civ. P. 17-19, 21. Issues of coordination and consolidation will be taken up separately, at appropriate times. Fed. R. Civ. P. 42.

The severed lawsuit, when filed, will be considered as having been filed as of the earlier date.

Counsel for other cases grouped under 21 MC 100, to the extent similarly situated, shall re-align their cases to be consistent with this order, and proceed either by stipulation or ex parte order to effect necessary severances. All amended complaints shall be filed within 20 days of this Order.

2. With regard to the substance of the motions: Plaintiffs represent that they suffered respiratory injuries by breathing noxious fumes while working in the debris of the World Trade Center following the terrorist-related aircraft crashes of September 11, 2001 without being given proper filtration masks; that they timely filed notices of claim against the City but withdrew their claims in favor of making claims to the Victim Compensation Fund, or because they had not experienced a manifestation of respiratory injury; that they later experienced such manifestation; and they now propose to sue. The following questions should be addressed by their briefs and affidavits:

- a. Their affidavits should allege the full facts of claims made to the Victim Compensation Fund, and any withdrawal or resolution thereof. All relevant documentation should be attached.
- b. Their briefs shall address the issue of waiver pursuant to section 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101; see Virgilio et al., v. Motorola and City of New York, No.

03-10156 (AKH), 2004 U.S. Dist. LEXIS 3636 (S.D.N.Y. Mar. 10, 2004).

- c. If a lawsuit against the City of New York remains viable, their briefs shall address why a notice of claim, followed by a lawsuit, is not timely dated from manifestation, without a nunc pro tunc procedure. N.Y. C.P.L.R. § 214-c; see also N.Y. G.M.L. § 50-e(5).
3. Defendants shall submit supplements and responses no later than November 22, 2004.

SO ORDERED.

Dated: New York, New York
October 13, 2004

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ALVIN K. HELLERSTEIN
United States District Judge